

DISTRICT OF COLUMBIA COURT OF APPEALS

Greene v. United States

Greene · No. Nos. 19-CO-713 & 20-CO-349 · Decided August 4, 2022

SUMMARY

The District of Columbia Court of Appeals vacated orders denying Marquell Greene's motion for a new trial under D.C. Superior Court Criminal Rule 33 and his motion to vacate convictions under D.C. Code § 23-110. The court held that the trial court applied an overly exacting analysis to Greene's interest-of-justice new-trial motion based on alleged confessions by alternative perpetrators and failed to address a related ineffective-assistance claim. The case was remanded for further proceedings and reconsideration.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Deahl, Associate Judge; Easterly, Associate Judge; McLeese, Associate Judge
JURISDICTION	District of Columbia
DECIDED	August 4, 2022
DOCKET	Nos. 19-CO-713 & 20-CO-349
DISPOSITION	vacated
PROCEDURAL POSTURE	Appeal from orders of the Superior Court of the District of Columbia denying Greene's motion for a new trial under D.C. Super. Ct. Crim. R. 33 and motion to vacate convictions under D.C. Code § 23-110.
STANDARD OF REVIEW	A denial of a motion for a new trial is reviewed for abuse of discretion; the court will not reverse if the denial is reasonable and supported by the record. The ineffective-assistance claim was remanded because the trial court failed to rule on the relevant issue in the first instance.
PRECEDENTIAL VALUE	Published and precedential opinion of the District of Columbia Court of Appeals.
PARTIES	Marquell Greene v. United States of America

TOPICS

- post-conviction relief
- ineffective assistance
- criminal procedure
- appellate procedure
- evidence

PRACTICE AREAS

Criminal procedure

Post-conviction relief

Ineffective assistance of counsel

Appellate procedure

Evidence

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by denying Greene's timely Rule 33(b)(2) motion for a new trial after assuming that two newly identified witnesses credibly confessed to committing the offenses.
2. Whether the trial court erred by failing to address Greene's claim under D.C. Code § 23-110 that trial counsel was ineffective for failing to investigate Johnson's confession and discover Wallace as the alleged actual perpetrator.

HOLDINGS

1. The trial court abused its discretion by denying Greene's timely Rule 33 motion while assuming that Johnson and Wallace were credible and nevertheless treating Greene's lack of diligence as a substantial reason to deny relief. If, on remand, the court finds a reasonable probability that jurors would hear and credit the witnesses' account, a new trial should follow because the interest of justice requires that important new-witness testimony be made available to the jury.
2. The trial court's § 23-110 order must be vacated because it failed to address Greene's claim that trial counsel was ineffective for not investigating Johnson's confession and, through reasonable diligence, discovering Wallace as the alleged actual perpetrator. The issue must be considered by the trial court in the first instance.

KEY QUOTATIONS

"The interest of justice standard calls for a new trial if 'a fair trial requires that the new witness' testimony be made available to the jury.'" (at 10)

"From that premise, and contrary to the trial court's conclusion, no reasonable sense of justice would require Greene to spend more than a decade in prison simply because he or his counsel could have been more diligent in pursuing exonerating evidence before trial." (at 11)

"The court simply failed to rule on it." (at 15)

FACTUAL BACKGROUND

Greene was convicted after the victim identified him as the armed assailant who lured the victim to a purported Lexus sale and attempted to rob him. Evidence linking Greene to the crime included registration of the bait Lexus, use of an email address associated with Greene, and GPS evidence placing Greene near the scene. Before trial, Deangelo Johnson told Greene's trial counsel that he, rather than Greene, committed the offenses, but counsel did not pursue the lead; after trial, Johnson and Aubrey Wallace told another attorney that they had committed the offense together, with Wallace matching the surveillance-video description of the assailant. The trial court denied Greene's new-trial motion while treating diligence as a significant factor and failed to address the related ineffective-assistance claim concerning Johnson and Wallace.

PROCEDURAL HISTORY

A jury convicted Greene of assault with intent to rob while armed and related offenses, and the Superior Court sentenced him to thirteen years' incarceration. Greene filed a timely pro se Rule 33 motion asserting that other men had confessed to the crimes; after an evidentiary hearing, the trial court denied the motion. Greene also filed a D.C. Code § 23-110 motion alleging ineffective assistance of counsel, including counsel's failure to investigate the confession lead, but the trial court did not address that aspect of the claim. The Court of Appeals vacated both orders and remanded for further proceedings.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Vacate the order denying the Rule 33 motion and the order denying the § 23-110 motion. Remand for the trial court to reconsider the Rule 33 motion consistently with the interest-of-justice standard and its credibility assumptions, and to address in the first instance Greene's ineffective-assistance claim concerning counsel's failure to investigate Johnson's confession and uncover Wallace.

CASES CITED

- Benton v. United States, 188 F.2d 625, 627 (D.C. Cir. 1951)
- M.A.P. v. Ryan, 285 A.2d 310, 312 (D.C. 1971)
- Green v. United States, 164 A.3d 86, 91-95 (D.C. 2017)
- Greene v. United States, 17-CF-810, Mem. Op. & J. at 1-2 (D.C. Feb. 15, 2019)
- Heard v. United States, 245 A.2d 125, 126 (D.C. 1968)
- Sellars v. United States, 401 A.2d 974, 978-79 (D.C. 1979)
- Tyler v. United States, 912 A.2d 1150, 1166-67 (D.C. 2006)
- Huggins v. United States, 333 A.2d 385, 387 (D.C. 1975)
- Godfrey v. United States, 454 A.2d 293, 299 (D.C. 1982)
- Schlup v. Delo, 513 U.S. 298, 325 (1995)
- In re Winship, 397 U.S. 358, 372 (1970) (Harlan, J., concurring)
- Whitley v. United States, 783 A.2d 629, 632, 635 (D.C. 2001)
- Brodie v. United States, 295 F.2d 157, 160 (D.C. Cir. 1961)
- Subsalve USA Corp. v. Watson Mfg., Inc., 462 F.3d 41, 45 (1st Cir. 2006)
- Arrington v. United States, 238 A.3d 218, 221 (D.C. 2020)
- Blackmon v. United States, 146 A.3d 1074, 1079 (D.C. 2016)
- Cosio v. United States, 927 A.2d 1106, 1123 (D.C. 2007) (en banc)
- Strickland v. Washington, 466 U.S. 668, 690-91 (1984)